

## REMARKS

Restriction to one of the following Inventions is required under 35 U.S.C. 121:

- Group I        Claims 1-17, drawn to a disposable shopping cart cover, classified in class 297, subclass 219.1;
- Group II       Claims 18-40, drawn to a shopping cart disposable cover system, classified in class 297, subclass 256.17.

Applicant confirms election to prosecute Group I, Claims 1-17, and reserves the right to prosecute Group II, Claims 18-40 in a divisional application. Applicant has withdrawn Group II, Claims 18-40.

The Examiner states that the application contains claims directed to the following patentably distinct species of the claimed invention: a. Specie I, Figures 1-3; b. Specie II, Figure 5; and c. Specie III, Figure 6. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, Claim 1 is generic.

Applicant has amended claims 15, 16, and 17 to be drawn to Specie I, Figures 1-3, or are generic. The other Claims 1-14 were generic or consonant with this requirement.

The Examiner has objected to the Abstract as it exceeds 150 words. Correction is required. See MPEP § 608,01 (b).

Applicant has submitted a new Abstract. The new Abstract has 136 words.

Claim 1 stands rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,330,888 to Klepfer. Klepfer discloses a cover that includes all the limitations recited in Claim 1. Klepfer shows a cover having a flexible planar sheet 102 (Fig. 1) of sanitary polymeric film with front and back sides, and a pressure sensitive adhesive coating 108 (Fig. 1) on the back side

of the sheet, wherein the sheet has a width greater than a sum of the space between a restraint railing and a horizontal bar of a shopping cart. Plus, the circumference of the horizontal bar and the perimeter of the restraint railing, the sheet has a first edge length that is less than the overall length of the horizontal bar. The sheet has a second edge length that is less than the sectional length of the restraint railing. The cover is capable of adhering and stretching taut across the space between the horizontal bar and the restraint railing providing a sanitary protective covering over the horizontal bar and the restraint railing, and the cover is capable of serving as an activity center.

The status of the claims is as follows. Applicant has amended Claim 1 incorporating the limitations of Claim 3, Claim 8 and much of Claim 9. Claims 3 and 8 are cancelled. The cancellation of Claims 3 and 8 necessitated amendments of Claims 4, 6, 7, 9, 11, 12, and 14. The species requirement necessitated in amendments of Claims 15 –17. Claims 2, 5, and 10 are original.

Claim 1, as currently amended, consists of the following elements (where the amended elements are underlined):

a flexible planar sheet of a sanitary polymeric film having a back side that is reverse printed, a front side with viewable reverse-side printed images, a width with a left lateral edge and a right lateral edge, a first edge length and a second edge length, and a tearable perpendicular plurality of perforations that initiates from a point about midway along the second edge length and extends toward the first edge length, partially bisecting the sheet;

a double-coated pressure sensitive adhesive strip on a left back side of the cover adjacent to the left lateral edge extending from the first edge to the second edge;

a double-coated pressure sensitive adhesive strip on a right back side of the cover adjacent to the right lateral edge extending from the first edge to the second edge; and

an activity center that is comprised of the viewable reverse-side printed images.

Klepfer, in U.S. Patent 4,330,888, does not teach adhesive strips that extend from one

edge to another edge, nor a plurality of perforations, nor reverse printed images. As the Examiner is well aware, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 2 U.S.P.Q. 2d 1051, 1053 (Fed. Cir. 1987), *cited in* M.P.E.P. § 2131. "The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989). In addition, the elements must be arranged as required by the claim. M.P.E.P. § 2131, *citing*, In re Bond, 15 U.S.P.Q. 2d 1566 (Fed. Cir. 1990). Thus, if any feature taught by the claimed invention is not taught by the reference cited by the Examiner, then the claimed invention and the reference are patentably distinct. In such a case, a 35 U.S.C. § 102 rejection is improper.

Claims 1, 6, and 7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,883,701 to Rankin et al. Rankin et al. disclose a cover that includes all the limitations recited in Claims 1, 6, and 7. Rankin et al. show a cover having a flexible planar sheet 20 (Fig. 4) of sanitary polymeric film with front and back sides, a pressure sensitive adhesive 159 (Fig. 5) coating on the backside of the sheet, a reinforcing carrier film 216 (Fig. 5) adhered to the back side of the sheet, and a removable release liner 157 (Fig. 5).

Applicant's sheet, as claimed in claim 1, is a film, not a non-woven material. Rankin et al. teach in col.10, lines 44-50, that "The face sheet is typically a non-woven material which may be imprinted with a design. The non-woven material is liquid permeable and allows spilled material to pass through it and into the absorbent core layer 214. Typical facing layers are of materials such as spun laced, resin bonded, spun bonded or carded thermoplastic containing or thermoplastic materials such as polyester and polypropylene." Furthermore, Applicant's sheet is a protective barrier, not a material that is liquid permeable that allows spilled material to pass through it. Applicant has a pair of double-coated pressure sensitive adhesive strips that extend from the first edge to the second edge. Examiner has mischaracterized Rankin et al. 20 as a sheet. The entire invention is identified by the number 20, and is composed of multiple layers (Fig. 5). With regards to Claim 6, Rankin et al. teach, "With reference to Fig. 4, the illustrated taping system includes a pair of upper tape strips 150, 152, and a pair of lower tape strips 154, 156. As shown in Fig. 5, and with reference to tape strip 150, these strips include a peelable cover layer 157, which is removed, as indicated by arrow 158, to expose an adhesive layer on a

substrate 159. The substrate 159 is adhesively secured to the liner and the adhesive exposed when layer 157 is removed adheres to the infant car seat when the infant seat liner is in position.” Rankin et al. does not teach a double-coated adhesive tape (which has a carrier and two layers of adhesive), but a single layer. With regards to Claim 7 (currently amended), Claim 7 depends on Claim 6, which depends on Claim 1, and has all the limitations of the intervening claims. Furthermore, Claim 7 reads on a release liner that is wider than the adhesive, and this provides a finger lift. Rankin et al. do not teach a finger lift. The 102 rejections are respectfully traversed, as all the elements are not taught by Rankin et al.

Claims 2-5 and 11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Klepfer in view of U.S. Patent No. 5,445,380 to Polsky. The Examiner states that Klepfer discloses a cover that is basically the same as that recited in Claims 2-5 and 11, except that film is not specified as transparent and lacks reverse printed viewable images, as recited in the claims. Polsky shows a polymeric film similar to that of Klepfer, wherein the polymeric film 100 (Fig. 1) is transparent and has a back side that is reverse printed producing viewable images on a front side that are entertaining advertisements. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cover of Klepfer such that the polymeric film is transparent and the back side of the sheet is reverse printed to produce viewable images of entertaining advertisements on the front side of the sheet that are protected by the film, wherein ink is not in direct contact with the child and the images form a printed activity center, such as the polymeric film disclosed in Polsky. One would have been motivated to make such a modification in view of the suggestion in Polsky that reverse printed images produce an image when folded, such as the folded sheet.

Applicant searched Polsky, and was unable to find where the reference teaches reverse printing. In the Background, Polsky cites U.S. Patent No. 566,854 that issued to Frank, who disclosed a type of folding picture puzzle, wherein parts of images are printed on the reverse side of the wheel such that when multiple sections are folded over on top of one another, a complete image or picture is formed. Partial backside printing would be ineffective as a barrier both from the child, who will come into contact with the printed images, and as a protective barrier for the images, which will come into abrasive contact by the child. Ink can be poisonous to the child. Polsky teaches in col. 3, lines 50–66 that, “The base sheet is preferably paper or paperboard in

which case the hinge lines are score lines, with the patchwork of partial images printed thereon. A clear polyester film, preferably made of polyethylene terephthalate (e.g., Mylar<sup>TM</sup>), may be added on each side of the base sheet to sandwich the base sheet into a laminate that confers strength to the puzzle, as well as for reinforcement of the score lines. Such a laminated puzzle board is better able to withstand the handling and the stress of constant folding and refolding of the puzzle during play. The puzzle board may alternatively be formed of other materials, such as plastic coated or impregnated paper, or Tyvek<sup>TM</sup>, or even entirely of plastic, e.g., a plastic puzzle board may be made from an opaque or transparent vinyl or another clear plastic sheet material with the patchwork of partial images printed thereon.” Polsky is not reverse printing, but direct printing of partial images, preferably as laminate. Combining Polsky with Klepfer does not result in subject matter as a whole that would have been obvious at the time the invention was made to a person having ordinary skill in the art. Combining Polsky with Klepfer teaches a bib with images, not a disposable shopping cart cover. Klepfer’s invention has no means for protecting both the handle and the child’s seat of a shopping cart. Claims 2, 4, 5, and 11 are dependent claims depending from Claim 1, which is a shopping cart cover. Claim 3 is cancelled. The rejections are respectfully overcome.

Claims 6 and 7 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Klepfer in view of U.S. Patent No, 4,769,024 to Pike et al. Klepfer discloses a cover that is basically the same as that recited in Claims 6 and 7, except that the back sheet lacks a reinforcing carrier film, as recited in the claims. See Figure 10 of Klepfer for the teaching that the edge 114 of the cover forms a removable release liner protecting the pressure sensitive adhesive coating. Pike et al. show a sheet similar to that of Klepfer, wherein the sheet (Fig. 4) has a back side with a reinforcing carrier film coated with a pressure sensitive adhesive (Fig. 10). Therefore, It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cover of Klepfer such that the pressure sensitive adhesive coating is coated onto a reinforcing carrier film that is adhered to the back side of the sheet, such as the sheet disclosed in Pike et al. One would have been motivated to make such a modification in view of the suggestion.

Applicant admits that Pike et al. teach that an adhesive tape can have a reinforcing carrier film coated with a pressure sensitive adhesive. However, Klepfer teaches that the tape is

substantially along one edge of the bib (Fig. 1). In contrast, Applicant's Claim 1 and the specification (page 9, lines 18-20 state, "The adhesive coating **26** is in strips, which are positioned near the left lateral edge **27** and the right lateral edge **25**, and extend from the first edge length **22** to the second edge length **24**." Claim 7 (currently amended) reads on a release liner [that] is wider than the adhesive, creating an edge void that facilitates as a finger lift for the initiation and removal of the release liner. Neither Pike et al. nor Klepfer teach a finger lift. Claims 6 and 7 are dependent claims depending from Claim 1, which clearly distinguishes itself as a shopping cart cover. The rejections are respectfully overcome.

Claim 8 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Klepfer in view of Pike et al., as applied to Claims 6 and 7 above, and further in view of U.S. Patent No. 6,783,831 B2 to Cho.

Applicant's claim 8 is cancelled.

Claims 9, 10, 12-15, and 17 under 35 U.S.C. 103(a) as being unpatentable over Klepfer, as modified, in view of Pike et al. as applied to Claim 8 above, and further in view of U.S. Patent No. 5,897,164 to Kagan et al. Klepfer, as modified, discloses a cover that is basically the same as that recited in Claims 9, 10, 12-15, and 17, except that the cover lacks perforations initiating at a midway point that provide tails, as recited in claims. See Figure 7 of Klepfer for the teaching that the cover is a trapezoid that is a rectangle, and col. 3, lines 1-4, for the teaching that the sanitary polymeric film comprises polyethylene. Kagan et al. show a cover similar to that of Klepfer wherein the cover (see Fig. 5) has perforations initiating from a point midway from an edge such that the perforations bifurcate the cover forming two tails in the sheet. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the cover of Klepfer such that the cover has a tearable perpendicular plurality of perforations which initiates from a point about midway from the second edge length such that, when torn, the plurality of perforations bifurcates forming two tails in the sheet wherein the tails provide an opening capable of accepting at least one supporting rod, the cover is capable of use in a child's seat of a grocery shopping cart, the tails provide a barrier covering for leg openings, the cover is capable of being removed and disposed without leaving an adhesive residue, such as the cover disclosed in Kagan et al. One would have been motivated to

make such a modification in view of the suggestion in Kagan et al. that the tails extending midway from an edge of the cover allows coverage of a baby in a supporting structure with an obstruction.

Applicant has searched Kagan et al. and is unable to find any reference to perforations. The reference is improper as the cited element is not present. Applicant is not claiming buttons, snaps, etc. The rejection to Claims 9, 10, 12-15, and 17 is respectfully overcome.

Support for the Applicant's assertion that the 103 rejections should be withdrawn is found in *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966). Patent examiners carry the responsibility of making sure that the standard of patentability enunciated by the Supreme Court and by the Congress is applied in each and every case. Under Section 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Office policy has consistently been to follow *Graham v. John Deere Co.* in the consideration and determination of obviousness under 35 U.S.C. 103. The four factual inquiries for determining obviousness are briefly as follows:

- (A) The claimed invention must be considered as a whole;
- (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- (D) Reasonable expectation of success is the standard with which obviousness is determined.

The Applicant's invention falls in the class/subclass of 297/219.1, while Klepfer is classified 2/48 (e.g., a bib); Polsky is classified 273/155 (e.g., a puzzle); Rankin is classified 428/136 (e.g., a car seat liner); Cho is classified 428/43 (e.g., a placemat); Pike is classified 604/390 (e.g., a garment); and Kagan is classified 279/219.12 (e.g., a blanket). At a minimum

the rejections do not meet the standard of criteria of (C) where the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention, and do not meet the criteria of (A) where the claimed invention must be considered as a whole. Only Kagan falls in the same class, and it is a blanket. None of the cited art is a disposable shopping cart cover.

There are no fees and no new claims.

In view of the foregoing amendment and these remarks, this application is now believed to be in condition for allowance and such favorable action is respectfully requested on behalf of the Applicant.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "F. Rhett Brockington". The signature is fluid and cursive, with a large loop at the end.

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